STOEL RIVES LLP
ATTORNEYS AT LAW

770 L Street, Suite 800
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

JOHN A. MCKINSEY
Phone: (916) 447-0700
jamckinsey@stoel.com

December 13, 2007

BY HAND DELIVERY AND EMAIL

The Honorable James D. Boyd, Vice-Chairman and Presiding Member
The Honorable John Geesman, Commissioner and Associate Member
Hearing Officer Paul Kramer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Carlsbad Energy Center Project (07-AFC-6)
Response to Staff's Issues Identification Report

Dear Commissioners and Hearing Officer Kramer:

On December 7, 2007, California Energy Commission ("CEC") Staff presented its Issues Identification Report ("Report") for the Carlsbad Energy Center Project (the "Project" or "CECP"). Carlsbad Energy Center LLC ("Carlsbad Energy") is pleased to provide the following comments in response thereto. Carlsbad Energy will work cooperatively with CEC Staff and the City of Carlsbad to ensure that this environmentally superior and regionally important energy project is approved and built on a schedule consistent with San Diego County's critical need for new local capacity by 2010. The California Public Utility Commission ("CPUC") recently stated the need for new fossil-fueled generating resources in the San Diego area is 1,005 megawatts ("MW").

CECP not only will be a very important step toward achieving the 1,005 megawatts of needed new generation and ensuring that the region has a reliable and efficient supply of clean electrical energy meeting greenhouse gas standards, the Project also represents an important step forward toward an ultimate phase out of the aging steam generating units at the Encina Power Station ("Encina") and eliminating the use of ocean water for cooling. The Project will add 540 new MW (for a net 220 MW considering the shutdown of Units 1, 2, & 3) at strategically located Encina, which is a critical location on the San Diego Gas and Electric regional electrical grid that brings important electricity south into the San Diego region. CECP's presence would help reduce dependence on supplies from the north and help ensure a stable supply of electricity in the Carlsbad load center even in the event of emergency loss of imported power on transmission

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lines, as we saw during the 2007 wildfires in San Diego. Additionally, the fast 10-minute starting feature of CECP provides a reliable backup power source to the region's renewable resources (such as wind), which may not be available during peak demand periods.

CECP will replace the three oldest of the five units at Encina with new, efficient, low-impact units, located on the eastern-most section of the Encina property, across the railroad tracks and up against I-5 in a low visibility location, as outlined in the City's Redevelopment Plan for the area. The Project creates significant environmental benefits to the area including permanent shutdown of the Units 1, 2, and 3, eliminating the once-through ocean water cooling associated with those retired units, which has received substantial support from environmental organizations concerned with the marine effects of such systems. Because of the reduction of overall once-through ocean cooling at the Station, the Coastal Commission has stated it will not have comments on the Project. Additionally, CECP improves the greenhouse gas emissions performance at Encina by over 30% relative to the existing units through substantial fuel efficiency gains. These energy and environmental attributes of the CECP aligned precisely with all local, regional, and state initiatives aimed at modernizing our aging electrical infrastructure, including the South Carlsbad Coastal Redevelopment Plan, the 2007 CEC Integrated Energy Policy Report, Energy Action Plan II, and the San Diego Regional Energy Strategy Report. It also achieves the goals of AB 1576 by using imbedded infrastructure and existing land use rather than imposing these burdens on a Greenfield location.

All of these energy and environmental benefits and enhancements will be realized with implementation of CECP and without adverse impacts to the environment or the community. Further, the Project facilitates the Applicant's and the City of Carlsbad's published shared vision of relocating the generating units away from the beach, in a smaller, more efficient generating station, phasing out the existing power plant so that the remainder of the site can one day be redeveloped consistent with permitted uses within the coastal zone. Implementing CECP now takes us in a long way forward to realizing such a future and the balance of the existing Encina steam generating units, Units 4 and 5 (net 630 MW), would then be phased out when those units are no longer needed to maintain electrical system reliability.

Land Use Issues

The Issues Identification Report raises two reasons why Land Use is considered to be a major issue. For one, it discusses the City of Carlsbad's assertion that a comprehensive update to the Specific Plan is required to be provided as part of this Project. We believe that conclusion is incorrect for several reasons.

First, the "stated city policy requiring a comprehensive amendment" was an older policy of the City adopted prior to the SDG&E sale of the power plant to Cabrillo Power I LLC ("Cabrillo"). The old requirement was set forth in a May 12, 1998 Council "Resolution of Intention" (Res. No. 98-145) and was intended to require SDG&E to comprehensively plan the power plant property (now owned by Cabrillo) as well as the additional SDG&E owned property immediately south of the power plant and SDG&E's large land holdings on the east side of Interstate 5. Therefore, the policy was primarily driven by the City's desire to plan the non-power plant properties and was never intended to apply to power plant expansion.

Second, after Cabrillo acquired the power plant, it began processing the Precise Development Plan ("PDP") and ancillary Specific Plan Amendment ("SPA") for the power plant site alone. Cabrillo's applications were simply to catalogue the then existing uses and facility site plan and involved no different or expanded uses. The City accepted the applications and began reviewing them **without ever invoking** the earlier comprehensive requirement directed at the former ownerships.

Third, before Cabrillo's PDP and SPA were considered, at the request of the City and Poseidon Resources, Cabrillo's PDP and SPA amendment applications were modified so as to include the Poseidon desalination project. In fact, the City Council on August 5, 2003 adopted Resolution No. 2003-208, **expressly revoking the earlier 1998 policy statement.** In the recitals, the City stated: "...discussions with property owners within Specific Plan 144 area relating to land use, public access and other similar matters have progressed to the point where the City Council believes it is not necessary to update the entire Specific Plan at this time." Based on the foregoing, the Council resolved: "...an amendment of Specific Plan 144 shall be processed for the processing of the Carlsbad Desalination Facility and the Encina Power Plant rather than a comprehensive update of the entire Specific Plan." Clearly, the pre-existing policy was specifically made inapplicable to the power plant site owned by Cabrillo.

Finally, notwithstanding the City's 1998 policy statement, at a time when virtually all of the much larger specific plan area was under the same ownership of SDG&E, neither Poseidon nor Cabrillo would have the legal power or authority to force SDG&E, or any other third party, to participate in any Specific Plan amendment process, and therefore, such an arbitrary imposition on a private property owner would effectively be an improper denial or impediment to pursuing its existing plant operations. While under California law, the City itself might pursue a comprehensive amendment affecting multiple owners and uses, the private owners could not force others to participate. In this regard, it is particularly illuminating to note that the original 1998 Council resolution did not require the private owner (SDG&E) to undertake a

comprehensive SPA, but rather was a "Resolution of Intention" directing its own city staff to pursue consideration of the city itself seeking a comprehensive amendment, not the owner.

For all of the above reasons, the record is clear that the City expressly acted to separate Cabrillo and Poseidon processing of PDP and SPA's from the pre-existing desire of the City to compel a comprehensive amendment when SDG&E owned and controlled the larger specific plan area. The CEC should not compel or require that the CECP AFC meet the requirements of a comprehensive update to the Specific Plan.

The Issues Identification Report also discusses the City of Carlsbad's perception that the Application for Certification lacks sufficient data for the CEC and the City to evaluate the project's compliance with the existing land use ordinances of the City. Carlsbad Energy does not believe this conclusion is accurate, but, nonetheless remains steadfastly committed to providing all necessary or reasonable supplemental information as requested in data requests. Carlsbad Energy also looks forward to demonstrating the full compliance with all applicable City of Carlsbad land use ordinances and policies. The City's General Plan designates the site as "U"-Utility allowing power plant and other public resource (desalination) uses. In fact, when the City approved the PDP and SPA144H for the power plant and desalination, it expressly made the findings that those uses were in full compliance with all applicable general plan and zoning regulations and ordinances. In turn, the existing base zoning is "PU" – Public Utility, thereby implementing the General Plan "U" classification. Under California law, cities are required to have their zoning conform to the applicable General Plan designation.

Two other important land use plans/policies also substantiate the Project's compatibility and consistency. The City's South Carlsbad Coastal Redevelopment Plan expressly allows power plant uses and further, includes statements to support the CECP itself, in that the Plan seeks to replace the existing power plant with more modern and efficient technologies to be located between the railroad tracks and Interstate 5 as part of a larger, long term goal of decommissioning the existing steam generating units and demolishing the large generating structure and stack. The goal is to eventually use some or all of the existing power plant property west of the tracks for a range of public and private recreational and visitor serving commercial and retail uses. Consistent with the Redevelopment Plan visions, the California Coastal Commission and City Local Coastal Program contains similar authorizations for power plant uses, modernization and relocation, with some or all of the westerly portion becoming available for tourist serving recreational, commercial and retail uses fully in keeping with policies and objectives of the Coastal Act.

Air Quality Issues

CEC Staff also indicates a concern that the CECP may not be able to offset emissions at a one to one ratio through reliance on credits generated from the shutdown of Units 1, 2 and 3 and the existing power plant facility. Carlsbad Energy is confident that this issue will be resolved to CEC staff's satisfaction through the data request, data response, and workshop process.

Conclusion

Carlsbad Energy looks forward to a timely and prompt resolution of any issues and to the continued processing of the AFC. Carlsbad Energy also looks forward to working with the City of Carlsbad to ensure the Project is fully understood in the context of its qualities and benefits and that it correctly fits with the community's needs and expectations.

Should you have any questions or concerns regarding these comments, please do not hesitate to contact me at (916) 447-0700.

Respectfully submitted,

John McKinsey / kjh

John A. McKinsey
Stoel Rives LLP
Attorneys for Applicant,
Carlsbad Energy Center LLC

JAM:kjh
cc: See Attached Proof of Service

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

Application for Certification for the ***CARLSBAD ENERGY CENTER PROJECT***	**Docket No. 07-AFC-6** **PROOF OF SERVICE** **(As of 11/6/2007)**

DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on December 13, 2007, I deposited in the United States mail at Sacramento, California with first-class postage thereon fully paid and addressed to those identified below ***OR*** transmitted via electronic mail consistent with the requirements of the California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210 the following documents:

CARLSBAD ENERGY CENTER LLC'S
RESPONSE TO STAFF'S ISSUES IDENTIFICATION REPORT

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-14
Sacramento, CA 95814-5512
docket@energy.state.ca.us

JAMES D. BOYD
Presiding Member
jboyd@energy.state.ca.us

JOHN L. GEESMAN
Associate Member
jgeesman@energy.state.ca.us

Staff Counsel
dratliff@energy.state.ca.us

Public Advisor's Office
pao@energy.state.ca.us

PAUL KRAMER
Hearing Officer
pkramer@energy.state.ca.us

JAMES REEDE
Project Manager
jreede@energy.state.ca.us

INTERESTED AGENCIES
Larry Tobias
Ca. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

INTERVENORS
None as of 12/13/07

APPLICANT
David Lloyd
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
David.Lloyd@nrgenergy.com

Tim Hemig, Vice President
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
Tim.Hemig@nrgenergy.com

COUNSEL FOR APPLICANT
John A. McKinsey
Stoel Rives LLP
770 L Street, Ste. 800
Sacramento, CA 95814
jamckinsey@stoel.com

APPLICANT'S CONSULTANTS
Robert Mason, Project Manager
CH2M Hill, Inc.
3 Hutton Centre Drive, Ste. 200
Santa Ana, CA 92707
Robert.Mason@ch2m.com

Megan Sebra
CH2M Hill, Inc.
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
Megan.Sebra@ch2m.com

I declare under penalty of perjury that the foregoing is true and correct.

Kimberly J. Hellwig